

MOTION GRANTED.

MOTION AGED.


UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MOTION TO DISMISS

The United States of America, by and through undersigned counsel, respectfully moves to dismiss the complaint in the instant case without prejudice. In support of that request, the government sets forth as follows:

On October 8, 2020, the government obtained a criminal complaint charging the defendant, Robert GOODNER, with a violation of Title 18, United States Code, Section 922(g)(1), in connection with the recovery of a Smith & Wesson revolver from a vehicle GOODNER was riding in on October 5, 2020. In the statement in support of the criminal complaint, the government represented that a review of GOODNER's criminal history and other law enforcement databases revealed that GOODNER was a convicted felon, based upon his convictions in Sumner County, Tennessee, for burglary of a motor vehicle and theft of property greater than \$10,000.

On October 21, 2020, however, undersigned government counsel became aware that GOODNER had been placed on judicial diversion in connection with these prior offenses. Although counsel is not aware of any binding precedent holding that a defendant charged with state felony offenses, who is placed on judicial diversion for those offenses, is not a felon for § 922(g)(1) purposes, the government is aware of an opinion in the U.S. District Court for the Eastern District of Tennessee that so holds. *See United States v. Mynatt*, 349 F. Supp. 2d 1056, 1063 (E.D. Tenn. Nov. 5, 2004). In light of that opinion, and in consultation with supervisors at the U.S.

Attorney's Office for the Middle District of Tennessee, the government moves to dismiss the complaint in the instant case without prejudice at this time.

Respectfully submitted,

DONALD Q. COCHRAN
UNITED STATES ATTORNEY

By: /s/ Ben Schrader
BEN SCHRADER
ASSISTANT UNITED STATES ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2020, I sent a copy of the foregoing via the Court's electronic filing system to counsel for the defendant.

s/ Ben Schrader

BEN SCHRADER
Assistant United States Attorney